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DAY OF GENERAL DISCUSSION: RIGHT TO EDUCATION
(ARTICLES 13 AND 14 OF THE COVENANT)

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The Right to Education and Programmes to Remedy Inequalities

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1. This paper addresses the link between the right to education and what are generally termed "affirmative action programmes". On the one hand, it is asserted that everybody has the right to education; on the other, there is a continuing need for a certain type of discrimination vis-à-vis disadvantaged population groups. The paragraphs below seek to answer the complex and sensitive question whether that is reasonable.

I. THE BASIC ASSUMPTIONS

2. To clarify the positions and arguments that will be developed below, the author considers it essential to set out here the principles underlying his approach to the topic:

(a) The existence of the right to education as a common right of all human beings within the framework of the Universal Declaration of Human Rights;

(b) The view that the right to education is an end in itself and not nearly a means of achieving other aims. This is to assert the centrality of this issue and the impossibility of setting aside the right to education in the light of the exercise of other rights;

(c) The belief that, despite the progress - and, in some cases, the setbacks - of recent years and decades, high levels of social, economic and cultural inequality persist in modern societies, whether in industrialized or developing countries;

(d) The need to work together to build new, fairer and more egalitarian societies through a variety of means, including the effective promotion of the right to education.

3. These principles having been stated, let us now examine the current situation as regards the right to education.

II. THE RIGHT TO EDUCATION: ITS EXERCISE IN PRESENT-DAY SOCIETY

4. It is not the author's intention to burden the reader with figures and statistics concerning the exercise of human rights in the sphere of education; these can easily be obtained from publications by the United Nations, UNESCO and other prestigious international bodies. A variety of official and private bodies are currently engaged in devising indicators that will show the degree of enjoyment of the right to education in each individual country and in the world as a whole. That notwithstanding, it would be no exaggeration to say that the statistics currently available show that there are enormous shortcomings in this respect and therefore call seriously into question the worth of the current educational policies aimed at overcoming them.

5. This having been said, it is time to discuss the points that seem to the author to be fundamental to analysis of the exercise of the right to education.

A. The right to a high-quality education

6. While it is certain that, because of the greater social equality that obtains there, the right to education is more widely enjoyed in developed countries than elsewhere, it is also true to say that the right to high-quality education does not extend to the population as a whole: the existence of better educational centres in socially advantaged areas, the payment of high fees at elite private institutions, the distinctions made between students at various types of institution (depending on the fields of study) are, in practice, sources of segregation and social differentiation. This view has been borne out by numerous pedagogical and sociological studies.

7. It is not simply a matter, then, of asserting that the right to education is an unalterable principle: that right must also be applicable to all human beings at an equivalent level of quality. When people's initial social and economic situations are clearly different, it is unacceptable to say that it is the market which establishes the differences between individuals or households according to their merits and qualities.

8. The serious inequality apparent in developed countries is even more marked in developing countries, where the quality gaps between educational centres are much wider still. Moreover, and paradoxically, in some countries the best institutions are public but are attended only by children from the most privileged classes or specific ethnic groups, whilst the very poor either attend no institution at all or go to private, fee-paying institutions.

B. Gender and the right to education

9. Numerous studies have been made of the links between education and gender. Gender equality figures among present-day social demands in most of the world's countries. Daily life, however, confirms yet again both that differences still persist between men and women in many areas of society and, more specifically, that enjoyment of the right to education differs with gender.

10. The author recognizes that this phenomenon is attributable not only to educational policies that fail to provide adequately for the correction of this gender imbalance but also to other sociocultural and economic factors that reinforce and foster such inequality.

11. Whatever the case, it is certain that, despite the efforts in recent decades to reduce it, inequality as regards the right to education exists and that the persistence of that situation constitutes a clear violation of article 2 of the International Covenant on Economic, Social and Cultural Rights.

C. Social class and the right to education

12. Societies' social structures and the links between them and education have for several decades now been among the principal subjects of study for educational and social scientists. There is, it seems, a trend in most of the world's societies towards homogeneity, although even now more people are affected by huge differences than not.

13. The facts speak for themselves. A glance at the developing countries shows how "social reproduction" proceeds in all its horror, decade after decade, generation after generation, through the educational system. The differences in the opportunities for access to basic and higher education according to one's social class are obvious. And in the developed countries there is, because of the growth in the relative size of the middle class, a steadily rising tendency to forget that these countries' populations contain substantial pockets of poverty and that for the people in them access to education is little more than a dream. For example, in developed countries the percentage of students from lower-class households (households with incomes close to the minimum wage) enrolled in higher educational institutions is far lower than the distribution of the population by social class implies it should be. Such a situation, unless attributable to a link between intelligence and social class (something that remains both scientifically and socially unacceptable), clearly implies a breach of article 2 of the Covenant.

D. Minorities and the right to education

14. In modern usage, the term "ethnic minority" denotes more than a mere numerical concept. It does indeed mean a "minority", but also, and more specifically, a community that, because it is culturally - and economically - distinct, suffers from some form of social and political discrimination. That is why studies of ethnic minorities generally refer to communities with reduced purchasing power and customs and habits that differ clearly from those of the majority of the population.

15. Studies made in numerous countries have concluded that these population groups do not exercise their right to education in the same way as the rest of society. Like other experts in the field of education, the author feels that cultural differentiation is but one further instance of discrimination on top of an underlying and more important form of discrimination: the household's income level. In any event, whether we look at the question from this point of view or another, the fact is, as has already been said, that article 2 of the Covenant is being breached in this respect too.

16. To sum up, we can say, without risk of error, that to be a woman from a low social class and an ethnic minority is a combination entailing a serious handicap as regards the free and consistent exercise of what is a fundamental right, namely the right to education.

III. PROGRAMMES TO REMEDY INEQUALITIES

17. Programmes to remedy inequalities - otherwise known as affirmative action programmes - are a strategy for resolving as effectively as possible pre-existing problems of inequality, the premise being that an equality policy for the benefit of population groups that do not "de facto" have the same opportunities as others becomes a "bogus policy of equality".

18. The following may be considered an eloquent example: imagine a town where the education authorities offer adult education courses free of charge to everyone who wants to attend. It might be thought, from one point of view, that the offer, by its nature, was consistent with the equal-opportunity principle. It is, however, likely that, for reasons of timing, course content, place of residence, transport facilities, etc., certain population groups would have more chance of attending the courses than others: categories such as, say, working mothers or under-employed fathers might find access to such activities extremely difficult and would, as a result, suffer clear discrimination because of their gender, social class, occupation, emigrant status or the like.

19. What is the best course of action in such a situation? To persist with equality policies aimed at the entire population so that each person or community can make an individual choice according to market principles or, on the contrary, to establish some type of compensatory mechanism to make access easier for specific groups? Affirmative action programmes come under the second heading.

20. A policy of *discriminating* against certain population groups for the benefit of others means opening a very controversial discussion that may lead to the raising of the question how far article 2 of the Covenant will be breached if such policies are pursued as regards the right to education. To answer that very important question, we should bear in mind the following:

1. The *formal* equality policies that many countries have been pursuing for quite some years now unquestionably breach article 2. The economically weak sectors of relevance to particular cultural groups or women (for example, the rural sector), being remote from the decision-making centre, have clearly suffered from discrimination as regards educational opportunities in an education market to which they had, in appearance, the same opportunities for access as other, more privileged sectors. In the great majority of countries, the right to education for all remains an utopia even today;

2. The right to education for all is not a means in itself, but an end in itself and that strategies to achieve it may differ from one another and be subordinated to that end. That is why the programmes in question are often referred to as "positive discrimination programmes", the "discrimination" being employed as a means of achieving the highly desirable objective of equality of educational opportunities. In short, the strategies are subordinated to the attainment of a more important end goal;

3. The above-mentioned policies for remedying inequalities are, in fact, being applied in various social spheres without arousing discussion regarding the principle of equality before the law. For example, developed countries' tax policies make provision, to a greater or lesser degree, for economic discrimination regarding the payment of personal income tax. People with high earnings are obliged to pay more tax than those whose income is lower. This principle of positive discrimination has as its aim the achievement of a higher objective, greater social equality. Policies of this kind are by no means new and are widely accepted and employed in other areas.

21. We may conclude, therefore, that recourse to this type of programme is of value and relevant to modern-day society, since it enables the fulfilment of articles 2, 13 and 14 of the Covenant. That being so, there follows a number of proposals for action.

IV. PROPOSALS FOR ACTION WITHIN THE FRAMEWORK OF ARTICLES 13 AND 14 OF THE COVENANT

22. The first question to be answered is what to call these policies designed to ensure, through positive-discrimination strategies aimed at less advantaged population groups, greater equality as regards the right to education. In the author's opinion, it would be appropriate to refer to them always as **programmes to remedy inequalities in education**. That would relieve the title of the negative connotation of the word "discrimination" while keeping the idea of compensating for an obvious social imbalance.

23. Second, there is a need for concrete proposals concerning article 13 of the Covenant from the point of view of that compensation. Specifically, with the various paragraphs of that article in mind, the author proposes the following:

(a) Primary, secondary and adult education syllabi should include specific activities aimed at promoting human rights and more particularly equality pursuant to the International Covenant on Economic, Social and Cultural Rights;

(b) Primary- and secondary-school students from less privileged groups should be given more attention and educational support both inside and outside school, including, for example: institution of special programmes for the provision of support staff; assignment of the best teachers to these groups; building of learning-support centres; promotion of pioneering libraries in the sphere of new technology, etc. In short, more priority should be given to allocating greater financial and human resources to school areas with greater sociocultural and economic problems, as opposed to school districts inhabited by higher-income families (which can make up for certain shortcomings from their own pockets);

(c) Basic education programmes for people with an incomplete primary education should be among the priorities of national policy and financial efforts should be concentrated on providing them. Furthermore, disadvantaged sectors should constitute the target group par excellence;

(d) Freedom of choice (both within the State sector and as between the State and private sectors) must be made a reality for less privileged population groups. That will entail meeting a number of requirements:

(i) Fathers and mothers should be sufficiently well informed and trained to be able to choose as freely as possible. That will require the development of educational programmes and information campaigns for the parents of economically disadvantaged households;

(ii) There should be no additional economic cost (either direct or indirect) for attendance at a private as opposed to a State educational centre;

(iii) Centres' educational policy should be transparent and under social control, especially through the local educational community;

(iv) There should be encouragement and assistance for the creation and development of inter-cultural, inter-class, coeducational residential centres where students can learn the principles of equality between individuals and how to combat all types of discrimination.

24. The question of individual financial support for secondary- or higher-education students or persons following adult education programmes

deserves comment. Firstly, it should not be forgotten - as it so often is - that the principle of "free education for all" actually implies payment by all citizens through the medium of taxes, and that largely irrespective of income level. It is, therefore, a principle applicable to the entire population that is, in essence, clearly inequitable. In the final analysis, a policy of promoting the free access to all levels of education is very far from being a policy for remedying inequalities.

25. Second, State payment (i.e., payment by the population as a whole) for education covers a very significant proportion of the costs to a household of its offspring's studies. There are, however, other, indirect costs associated with the pursuit of an education, including travel, supplies, upkeep (sometimes), loss of the income that someone attending classes might otherwise earn, etc.

26. The third point to be borne in mind is that, with minimal variations over the past few decades, the effect of policies of bogus egalitarianism ("we are all equal: we all have the same opportunities") has been that students at the non-compulsory stages of education have come primarily from the upper and middle classes, with the less privileged population groups being very much under-represented.

27. It follows from these three remarks that any genuine policy for remedying educational inequalities should comprise the following:

(a) Greater efforts to make education free (as regards both fees and indirect costs) for less privileged population groups through a combination of scholarships and wide-ranging economic support so that genuine equality of opportunity becomes possible;

(b) Sharing of the cost of making education free (again, as regards both fees and indirect costs) among the more privileged population groups, beginning from higher education and extending downwards at least as far as the other stages of non-compulsory education. That would "release" sufficient funds to offset, through aid and material resources, the disadvantages suffered by the less privileged sectors of the population.

28. Lastly, it should be noted that any educational policy, including the policy of pursuing programmes to remedy inequalities proposed here, needs some initial testing in order for the necessary adjustments to be made. It is, therefore, very important for countries to undertake practical experiments in this respect and constantly to investigate and evaluate the impact of their actions.

V. RISKS AND OPPORTUNITIES FOR THE SOCIETY OF THE FUTURE AS REGARDS THE RIGHT TO EDUCATION

29. Policies for extending the right to education must bear in mind the risks and opportunities for their realization inherent in the society of the future. On reviewing the sociological and educational studies made to date, we find the following:

1. The "information and communication society" offers great prospects for expanding education through the use of new technology. We must, however, also be aware of the risk of the growth of new, wider forms of social exclusion associated with new factors such as access to the new educational networks or inability, because of a lack of training, to take full advantage of their potential. We must take care that the "digitally homeless" do not gradually become a new sub-class;

2. Our societies' cultural make-up is undergoing significant change, especially in the form of an increase in multiculturalism in the more developed countries. Logically, therefore, we can expect increases in the range of groups belonging to cultural minorities among less privileged population groups and in their problems of access to education;

3. As a result of, inter alia, the crisis of the welfare state as an idea and/or a reality in a significant number of countries, conventional programmes for promoting school enrolment may be called in question by the emergence of new, non-institutionalized processes contributing to higher drop-out rates;

4. There may, as a result of the intrusion into the educational sphere of a series of ideas that emphasize the market rather than the State as the regulator of educational supply and demand, be a period of uncertainty regarding the value of programmes to remedy inequalities. Such programmes, which are specially designed for fulfilment of the State's compensatory function regarding education, may be affected by the new situation. We must, then, without wishing to re-establish a State anxious to intervene in everything that concerns education, ensure that this compensatory function prevails with regard to the less privileged groups, whom the application of free-market principles would unquestionably leave on the (physical, economic, social and cultural) fringes of our societies.

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